IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1335 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SECRETARY - Petitioner(s)

Versus

KAILASBA KALYANSINH VALA - Respondent(s)

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Appearance :

MR JR NANAVATI for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 08/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment award dated 10th September, 1997 passed by the Labour Court, Bhavnagar in Reference [L.C.B.] No. 339 of 1991 whereby the Labour Court has directed the petitioner to

reinstate the respondent in service along with full back wages.

2. The short facts of the case are that the respondent was working as a Teacher with the petitioner School. It is the case of the respondent that she is working as such since the year 1984. The petitioner without following the procedure under the Industrial Disputes Act, 1947 orally terminated the service of the respondent w.e.f. 1st July, 1991. Feeling aggrieved by the said action of the petitioner, the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Bhavnagar for adjudication. The Labour Court after considering the case on merits passed the impugned award. Hence, this petition.

3. Mr. Nanavati learned advocate for the petitioner has contended that the respondent was working as a Teacher in a primary school and in view of the decision of the Apex Court in the case of Miss Sundarambal v. Government of Goa, Daman & Diu, reported in A.I.R. 1988 S.C. p. 1700, it is held that a Teacher employed in a school does not fall within the definition of expression “workman” though the school is an industry in view of the

definition of “workman” as it now stands. Therefore, when the service of the teacher is terminated, it cannot be referred under Section 10 of the Act.

4. Mr. Mishra learned advocate for the respondent has contended that the contention raised by the petitioner has not been raised before the Labour Court and, therefore, the same cannot be permitted at this stage.

5. I have heard the learned advocate for the parties and have perused the materials produced on record. Since the contention raised by the petitioner is a mixed question of law and fact, the same is required to be considered by the Labour Court. Apart from that the petitioner has neither filed any written statement nor has produced any evidence on record as to teacher is not a “workman” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Looking to the peculiar facts and circumstances of the case, and in view of the aforesaid submission, it would be appropriate to remand the matter to the Labour Court for deciding afresh.

6. In the result, the petition is allowed. The

impugned order dated 10th September, 1997 passed by the Labour Court, Bhavnagar in Reference [L.C.B.] No. 339 of 1991 is quashed and set aside. The matter is remanded to the Labour Court for deciding afresh after allowing the parties to lead oral as well as documentary evidence.

7. The Labour Court shall hear and decide the matter afresh within a period of six months from the date of receipt of writ of this Court, without being influenced by the earlier order which is quashed and set aside in the present petition and also the present order since the same has been passed without entering into the merits of the matter.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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